IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

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S.B. Civil First Appeal No. 22/1987
against the judgment and decree dated 23.12.1986 passed by learned ADJ No. 2, Alwar in Civil Suit No. 22/1982 dismissing the plaintiff's suit for possession and mesne profits

Tara Chand *Versus* Kailash Chand

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Date of order :: September 06, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.P. Singh for the appellant-plaintiff
Mr. R.K. Mathur for the respondent-defendant

BY THE COURT:

1. This appeal is directed against the judgment and decree dated 23.12.1986, whereby the learned Additional District Judge No. 2, Alwar rejected the Civil Suit No. 22/1982 filed by the plaintiff Tara Chand against the defendant Kailash Chand for possession and mesne profits.

2. The case of the plaintiff is that he purchased a residential house situated in Mohalla Balji Rathore Ki Gali, Alwar from the defendant Kailash Chand who had purchased the same in a court auction in some execution proceedings on 15.10.1970. The plaintiff claimed to have purchased the same from the defendant on 12.01.1977 by a registered sale deed after after an agreement in that regard was executed by the defendant. However, since the plaintiff was posted in Government service at a different place, at the request of the defendant for performance of marriage of his sister, he gave back the possession of the said residential house as a licensee to the defendant with the understanding that the defendant would pay monthly mesne profits of Rs. 200/-. According to the plaintiff, he revoked the license and claimed back the possession from the defendant on 12.04.1982 and when the defendant refused to hand over back the possession to the plaintiff, the plaintiff filed the said civil suit claiming the possession and mesne profits for 35 months at the rate of Rs.

200/- per month.

3. The defendant filed his written statement before the trial court and denied having sold the said residential house to the plaintiff and he stated that the same was in fact a transaction of mortgage and defendant wanted to obtain a loan of Rs. 9000/- against the mortgage of the said residential house with a right to the plaintiff to purchase the same if the loan is not repaid within five years and for satisfaction of the plaintiff, the said sale deed was executed. However, the defendant did not produce any evidence before the trial court nor did he remain present in the proceedings after 16.11.1985 before the trial court. No documentary evidence or oral evidence were produced on behalf of the defendant. The plaintiff, however, produced four witnesses in support of his case, namely P.W.1 Tara Chand Jain the plaintiff himself, P.W.2 Raghunandan, P.W.3 Kishan Lal and P.W.4 Mohan Lal. He also produced Ex.1 sale certificate of court in favour of defendant Kailash Chand, Ex.2 Agreement to Sell dated 04.01.1977 and Ex.3 Registered

sale deed dated 12.01.1977.

4. The learned trial court after framing following issues and taking evidence produced on behalf of the plaintiff, proceeded to decide the suit. Following issues were framed on 01.02.1983 by the trial court :-

(i) Whether the plaintiff had purchased the suit property from the defendant by a registered sale deed for a sum of Rs. 20,000/- on 12.01.1977.

(ii) whether the defendant was in possession of the suit property as a licensee from 11.01.1977 and whether he agreed to pay the mesne profits of Rs. 200/- per month.

(iii) Whether the plaintiff had revoked the license in favour of the defendant on 12.04.1982.

(iv) Whether the plaintiff is entitled to mesne profits of Rs. 200/- per month from the defendant from 12.01.1977.

(v) Whether the valuation of suit was less and whether the court fees is deficit.

(vi) Whether the court had jurisdiction to try the said suit.

(vii) Relief.

5. The learned trial court decided the issue No. 1 in favour of the plaintiff and found that the defendant had executed the said sale deed Ex.3 in favour of the plaintiff and had received the consideration of Rs. 20,000/- from him, Rs.4000/- in cash and Rs.16,000/- by cheque No. X339494 dated 11.04.1977 drawn on SBBJ. All the three written documents, namely sale certificate Ex.1, Agreement to Sell Ex.2 and registered sale deed Ex.3 were found to have been duly proved by the plaintiff and accordingly, the said issue was decided in favour of the plaintiff Tara Chand. It may be stated here that the said registered sale deed Ex.3 contained a stipulation therein that the possession of the said house has been handed over to the purchaser plaintiff Tara Chand. There is no challenge to the said finding of issue No. 1 from the side of defendant by filing cross appeal or cross-objection and

therefore, the finding of fact in this regard is final.

6. The learned trial court, however, decided the issue No. 2 against the plaintiff by holding that except the registered sale deed Ex.3, the plaintiff had not produced any evidence to the effect that the plaintiff had obtained possession of the suit property from the defendant on 12.01.1977 and it also appeared to the trial court quite unusual that the plaintiff would have given back the possession to the defendant as a licensee on 12.01.1977. The trial court further proceeded to assume that the registered sale deed dated 12.01.1977 was executed by the defendant as a measure of security against the possession being given to the defendant as a licensee. Thus, the trial court held that the plaintiff had failed to prove that he had given the possession of the suit property to the defendant as a licensee on 12.01.1977. While deciding issue No. 3 also against the plaintiff, the trial court observed that the plaintiff had failed to prove that he had revoked the license on 12.04.1982. Likewise, the issue of mesne profits of Rs. 200/-

per month was also decided against the plaintiff. The issue No. 5 and 6 as to deficit court fees and jurisdiction were, however, decided against the defendant and thus, the suit was rejected.

7. I have heard learned counsels at length and perused the pleadings, evidence on record and considered the rival submissions made at the bar.

8. This court is of the opinion that the learned trial court has erred in deciding the issue No. 2, 3 and 4 against the plaintiff. Once the registered sale deed Ex.3 containing the stipulation that the defendant Kailash Chand had handed over the possession of the said suit property to the plaintiff in pursuance of the sale of the suit property on 12.01.1977, was executed and registered and further supported with two other written documents like Ex.1 sale certificate of court in favour of the defendant, who had purchased the said property in a court auction and the original was produced by the plaintiff, the subsequent purchaser, and Ex.2 the Agreement to Sell

executed by the defendant and no contrary evidence having been produced by the defendant who chose to remain ex parte throughout the proceedings after filing of the written statement, the learned trial court could not have refused the decree of possession on mere surmises and guess-work. The observation of the learned trial court that the plaintiff did not produce any evidence other than the registered sale deed showing the possession of the property having been handed over to him is far from the legal position that once such registered sale deed contained that stipulation and such sale deed was duly proved, the presumption as to the possession having been handed over to the plaintiff was required to be drawn by the trial court. The observation of the learned trial court that it was quite unusual to hand over back the possession to the defendant as licensee is also not correct. A purchaser and owner of the property can very well give back such possession by way of license, which may be even oral or in writing. Therefore, very premise taken by the learned trial court that the plaintiff failed to prove that he handed over back

the possession of the suit property as a licensee to the defendant, is incorrect and therefore, such finding of the learned trial court being perverse deserves to be set aside and reversed. The plaintiff has proved that the defendant was given the possession of suit house as a licensee. Accordingly, it is held that the defendant was given the possession of the suit property as a licensee on 12.01.1977 at the monthly mesne profits of Rs. 200/- as claimed by the plaintiff. Once it is held that license could be oral or in writing, its revocation can also be oral or in writing. Therefore, even if the plaintiff did not produce any letter of such revocation, even though claimed by him that he wrote such a letter, it cannot be said that there is no revocation of license on 12.04.1982. Therefore, the findings of issue No. 3 and 4 of the trial court are also not sustainable and the said issues are also liable to be decided in favour of the plaintiff-appellant.

9. Accordingly, the present appeal is allowed and the suit filed by the plaintiff-appellant Tara Chand is decreed. The

defendant Kailash Chand shall hand over the possession of the suit property to the plaintiff within a period of two months and shall pay the mesne profits at the rate of Rs. 200/- per month as claimed by the plaintiff in the suit for the period from 12.01.1977 till two months from today, i.e. 06.11.2007. If the defendant fails to hand over the possession of the suit property to the plaintiff within two months from today, the mesne profits of Rs. 200/- per month will stand enhanced to Rs. 2000/- per month. The decree be made accordingly. The defendant shall further pay costs to the plaintiff-appellant, which are assessed at Rs. 2000/-.

10. The appeal is allowed with costs.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 3